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Nos. 1025-1026

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In the Supreme Court of the United States

OCTOBER TERM, 1941

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No. 1025

NATIONAL BROADCASTING COMPANY, INC., WOODMEN  
OF THE WORLD LIFE INSURANCE SOCIETY AND  
STROMBERG-CARLSON TELEPHONE MANUFACTURING  
COMPANY, APPELLANTS

THE UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION, AND MUTUAL BROADCASTING SYSTEM, INC., APPELLEES

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No. 1026

COLUMBIA BROADCASTING SYSTEM, INC., APPELLANT

THE UNITED STATES OF AMERICA, FEDERAL COMMUNICATIONS COMMISSION, AND MUTUAL BROADCASTING SYSTEM, INC., APPELLEES

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ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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RESPONSE TO MOTIONS FOR TEMPORARY RESTRAINING ORDERS



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NATIONAL BROADCASTING COMPANY, INC., WOODMEN  
OF THE WORLD LIFE INSURANCE SOCIETY AND  
STROMBERG-CARLSON TELEPHONE MANUFACTURING  
COMPANY, APPELLANTS

v.

THE UNITED STATES OF AMERICA, FEDERAL COM-  
MUNICATIONS COMMISSION, AND MUTUAL BROAD-  
CASTING SYSTEM, INC., APPELLEES

No. 1026

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v.

THE UNITED STATES OF AMERICA, FEDERAL COM-  
MUNICATIONS COMMISSION, AND MUTUAL BROAD-  
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RESPONSE TO MOTIONS FOR TEMPORARY RESTRAINING  
ORDERS

These suits were brought in a statutory three-judge district court to enjoin the enforcement of

regulations of the Federal Communications Commission relating to radio stations engaged in chain broadcasting (NBC R. 1-18; CBS R. 1-20, 46-48). The court below held that it was without jurisdiction of the suits (NBC R. 432-445; CBS R. 456-470), but entered orders restraining enforcement of the regulations "until May 1st, 1942, or the argument of the appeal herein to the Supreme Court of the United States, whichever is earlier." (NBC R. 451; CBS R. 482).

On April 27, 1942, the Commission agreed by stipulation further to suspend enforcement of the regulations "until the last decision day of the October 1941 term of the Supreme Court of the United States or until the determination of the pending appeal \* \* \*, whichever is earlier." The next day both of the appellants filed motions in this Court for orders restraining enforcement of the regulations "until ten days after the filing in the district court of the mandate upon this Court's decision on this appeal.

Appellants state that by these motions they seek three things which have not already been granted to them by the stipulations:

1. In the event this Court affirms the judgments below they want time within which to pursue such other remedy as may be available or to modify their affiliation contracts so as to comply with the Commission's regulations.

2. In the event the judgments are reversed they want time within which to seek from the district court a determination of their motions for preliminary injunctions.

3. In the event this Court should not dispose of these appeals during the present term they want an order which will restrain enforcement of the Commission's regulations during the summer.

1. Insofar as appellants seek a stay in the event of an affirmance we oppose their request. The court below held that it was without jurisdiction of these cases and dismissed the complaints. If this Court should affirm, there would be no basis for enjoining enforcement of the regulations during the 25 day period before the mandate issues and for ten days thereafter.

Appellants' suggestion that a stay is necessary in order to afford them an opportunity to pursue "such other remedy as may be available" we believe is unwarranted. If their choice of court was wrong, that should not provide occasion for a stay while they look for relief elsewhere. Moreover, we argue in our brief (pp. 48-53) that the chain broadcasting regulations are not reviewable at this time in *any* court because they have no immediate legal effect but are mere declarations of the policies to be applied in future administrative proceedings. If this is correct, there is no other available remedy.

Nor is there basis for the assertion that if no other remedy is available the networks need a stay from this Court in order to arrange for the modification of contracts with their affiliated stations which do not comply with the policies announced in the chain broadcasting regulations. As our brief points out (pp. 27-28), the effect of the regulations will simply be that any radio station which has a contract with a network which does not comply with the announced policies will have its next application for a renewal of its license set for hearing. If, at or before that time, the licensee and the network should advise the Commission that they desire an opportunity to modify their affiliation contract so as to conform to the Commission's policies, they would, of course, be granted a reasonable postponement of the hearing.

2. If this Court should reverse the judgments and hold that the court below does have jurisdiction, of course, we would not object to a stay which would allow appellants a reasonable period after the filing of the mandates in which to seek from the district court a determination of their motions for preliminary injunctions, and the Washington legal representatives of appellants were so advised.

3. The stipulations suspend enforcement of the regulations up until the last decision day of the present Term. If the cases are disposed of at

this Term the question of a stay extending over the summer would become moot. Accordingly, there appears to be no occasion for the Government to state its views on that question at this time. However, if it should develop that the cases cannot be decided at the present Term, we would like the opportunity to file a further memorandum or to be heard before the circuit Justice.

Respectfully,

CHARLEY FAHY,  
*Solicitor General.*

APRIL, 1942